

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for)
Penalty Relief of:)**

DENNIS GLENN HOOPER, M.D.)

Case No. 800-2018-040162

**Physician's and Surgeon's)
Certificate No. G 54464)**

OAH No. 2019050752

**Petitioner)
_____)**

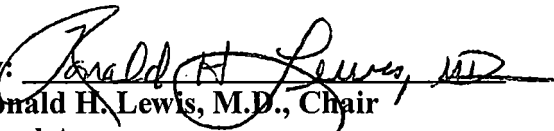
DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 27, 2019.

IT IS SO ORDERED August 28, 2019.

MEDICAL BOARD OF CALIFORNIA

By: 
Ronald H. Lewis, M.D., Chair
Panel A

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Penalty Relief by

DENNIS G. HOOPER, M.D., Petitioner

MBOC Case No. 800-2018-040162

OAH No. 2019050752

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on July 17, 2019, in Los Angeles, California.

Petitioner Dennis G. Hooper, M.D., appeared and represented himself.

Jocelyn Park, Deputy Attorney General, appeared for the People of the State of California pursuant to Government Code section 11522.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 17, 2019. After submission of the case, the ALJ redacted Petitioner's driver's license number from exhibit 1.

The ALJ hereafter makes his factual findings, legal conclusions, and order.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 25, 1985, Petitioner was licensed by the Medical Board of California (Board) as a physician and surgeon. He holds Physician's and Surgeon's Certificate number G 54464. That license is due to expire on November 30, 2020, unless renewed.
2. On December 12, 2005, the Board issued a Decision and Order (Decision) that revoked Petitioner's Certificate, but that order was stayed and Petitioner's certificate was placed on probation for five years, with various terms of probation, from the effective date of the order, January 11, 2006. The Decision issued in the Board's case number 06-2001-120995.
3. Petitioner submitted the pending Petition for Penalty Relief (Petition) to the Board on January 16, 2018. Petitioner seeks termination of the probation. All jurisdictional requirements have been met. It should be noted that Petitioner brought an earlier petition, in 2008, to terminate his probation. That earlier request was denied after a hearing in 2010.

The Underlying Causes for Discipline

4. Petitioner's license was disciplined because it was found that Petitioner, a clinical pathologist, had been negligent, and sometimes grossly negligent, in his analysis of various blood and tissue samples, generating both false negative and false positive results when diagnosing patients for carcinoma. Petitioner was found to have misdiagnosed four patients, one of them on three different occasions over a period of

approximately four months. The Decision also determined that Petitioner had demonstrated incompetence, given the number of misdiagnoses. There were some mitigating factors noted in the Decision, including that two of the cases were rather difficult.

A Summary of Petitioner's Probation Terms

5. As found above, the Decision imposed terms of probation upon Petitioner. The probation terms are common in cases where a practitioner has been found to have been negligent, or has demonstrated incompetence. The probation terms were in the Board's standard language, and the terms are not repeated in their entirety here. In summary, the probation order required the following:

Term no. 1: That Petitioner, within 60 days of the effective date of the Decision, enroll in a clinical training or education program equivalent to the Physician Assessment and Clinical Education Program (PACE) that is offered at U.C. San Diego's School of Medicine (the Program).

Term no. 2: That Petitioner's practice be restricted, until he completed the Program. While his practice was restricted, all of his final diagnoses were to be reviewed by another physician.

Term no. 3: That Petitioner notify every hospital where he had privileges of the Board's decision, by giving a copy of the Decision to the Chief of Staff or CEO.

Term no. 4: That Petitioner was, during probation, prohibited from supervising Physician Assistants.

Term no. 5: That Petitioner obey all laws.

Term no. 6: That Petitioner submit quarterly reports to the Board, under penalty of perjury.

Term no. 7: That Petitioner comply with the Board's Probation Unit, in terms of keeping it informed of his business and residence addresses and any travel out of the state for over 30 days, and he was not to practice in his residence.

Term no. 8: That Petitioner submit to interviews by Board representatives.

Term no. 9: That Petitioner, if he resided or practiced outside of California, report such out-of-state residence or practice to the Board. Petitioner's license could be cancelled if his out-of-state residency or practice totaled two years. However, that cancellation would not occur if he was practicing in another state, and was on active probation to that state's licensing authority. In that case most probation terms were tolled.

Term no. 10: That non-practice while a resident of California must be reported to the Board.

Term no. 11: That all financial obligations were to be complied with 180 days before the completion of probation. If all other terms were complied with, Petitioner's certificate would be fully restored at the end of the probation term.

Term no. 12: Defines a violation of probation and the possible consequences of a violation.

Term no. 13: That Petitioner was required to pay costs of \$22,844.62.

Term no. 14: That if Petitioner wanted to surrender his license, certain conditions would apply.

Term no. 15: That Petitioner pay probation monitoring costs.

Petitioner's Out-of-State Residence and Practice

6. Petitioner has resided in Texas since approximately 2000. He is licensed to practice medicine in Texas, where he self-reported his California probation. He and the Texas Medical Board stipulated that his Texas license would be placed on probation. He is in compliance with the terms of that probation.

7. In 2005, Respondent moved away from typical pathology practice, and focused on research into molds. He is a part owner of a laboratory in Texas that provides testing to assist physicians with the diagnosis of mold infections. It appears he practiced pathology in Texas, but significantly moved away from practice after 2012. He has co-authored numerous articles on the subject of testing mold. His lab, RealTime Laboratories, is co-owned with Dr. Vincent E. Bolton, M.D., along with two other owners who have small shares of the firm. Dr. Bolton described their lab as one of the best in the country.

8. There is no evidence of any disciplinary action by the Texas Medical Board, other than the probation there was driven by the California disciplinary action.

Petitioner's Compliance with Probation

9. Petitioner was cited by the Board in October 2012, because he had not paid probation monitoring costs. The citation ordered him to do so, and he is current on the monitoring costs.

10. Petitioner did not attend the PACE Program. When he sought reduction or termination of his probation in 2008, he then attested he could not afford PACE, and he had been unable to pay the costs awarded against him. The 2010 decision found that Petitioner had misunderstood the PACE requirement, as the probation term provided that he could attend an equivalent program in another state. The 2010 decision encouraged Petitioner to complete PACE or a comparable program.

11. Since the denial of his 2008 petition, Petitioner did not complete PACE or an equivalent program. Petitioner testified that he does not want to practice in California, and due to that fact, PACE would have a problem tailoring a program for him.

12. Because of his out-of-state residency, and practice, many of the probation terms are tolled, so that he does not have to comply with them at this time. Petitioner is in compliance with those probation terms that are applicable to him as an out-of-state practitioner.

Other Matters

13. Petitioner's business partner, Dr. Bolton, testified that Petitioner has not renewed his board certification in pathology (until 2012 Petitioner was board certified in both clinical and anatomical pathology), and that because of that, Petitioner cannot be credentialed and will not be allowed to practice pathology.

14. Dr. Bolton attested to Petitioner's good character and expertise. Others wrote letters in support of the petition. It appears that Petitioner has behaved in a professional manner for many years in the operation of his laboratory, and some medical practice, while residing in Texas.

15. Petitioner and Dr. Bolton were credible in their testimony, in terms of their demeanor. Petitioner was respectful of the Board's role and of this process.

LEGAL CONCLUSIONS

1. The Board has jurisdiction to receive the petition for termination of probation and to proceed thereon, pursuant to Business and Professions Code section 2307, based on Factual Findings 1 through 3.

2. Petitioner bears the burden of proving that he is entitled to the relief sought. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.)

3. The purpose of license discipline is not to punish an errant practitioner, but to protect the public. (E.g., *Camacho v. Youde* (1979) 95 Cal.App.161, 164; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.) Protection of the public is the Board's first priority. (Bus. & Prof. Code, § 2229.)

4. (A) Business and Professions Code section 2307, subdivision (e), allows an examination of a broad range of factors when considering a request to such as Petitioner's. Such factors include the nature of the conduct leading to discipline, activities since probation was imposed, Petitioner's activities during the time the certificate was in good standing, and Petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

(B) The conduct that brought about Petitioner's probation was failing to properly diagnose four patients some 20 years ago. Petitioner's activities since probation have been positive, in that he has practiced in Texas, and concentrated

on research since 2000, without incident. His reputation for truth and professional ability, in his current professional role, is good.

(C) Ms. Park, on behalf of the People, asserted that granting the Petition would create a loophole around probation. She contended that completing three years of probation in California is necessary to protect public safety in California, where Petitioner would be free to practice, unsupervised.

(D) The probation term with the most prophylactic purpose is the requirement to complete PACE or a comparable Program, as such a Program is designed to tease out a practitioner's shortcomings, and then remediate them. That has not been done, though the order on the 2008 petition spoke to the issue. As noted at the hearing, an unrestricted certificate would license Petitioner to practice any aspect of medicine in California, from brain surgery to diagnosing the common cold. That should not happen here, where Petitioner's skills have not been vetted by PACE or a similar program.

ORDER

The Petition of Dennis Glenn Hooper, M.D., to terminate his probation is denied.

DATE: August 14, 2019

DocuSigned by:
Joseph D. Montoya
JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings